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UNITED NATIONS

AT

Administrative Tribunal

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AT/DEC/724
21 November 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 724

Case No. 774: FUSSIMANYA-REYNA Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Mayer Gabay;

Whereas on 17 December 1993, Montserrat Fussimanya-Reyna, a staff member of the United Nations, filed an application, in which she requested the Tribunal, inter alia:

"...

2. To order the rescission of the decision of 12 October 1993 by the Secretary-General of the United Nations directing that Ms. FUSSIMANYA be considered for a transfer and/or mission, that Ms. FUSSIMANYA's performance be evaluated by her new supervisor within one year after her appointment to a new assignment, and that a recommendation be made as to whether her overall performance would at that time be in conformity with the provisions on the long-service step as contained in document IC/Geneva/3383.

...

4. To grant Ms. FUSSIMANYA the long-service step [provided for by appendix B to the Staff Rules of the United Nations] retroactively with effect from 3 May 1990.

5. To grant Ms. FUSSIMANYA compensation in the amount of US$25,000 for the damages sustained as a result of the administrative harassment to which her supervisors have been subjecting her.

6. Grant her equitable compensation for the delay in handling the present case.

7. Award her a sum of US$5,000 for expenses."

Whereas the Respondent filed his answer on 21 October 1994;

Whereas the Applicant filed written observations on 31 May 1995;

Whereas, on 29 June 1995, the Applicant submitted additional comments and documents;

Whereas, on 6 July 1995, the Tribunal put questions to the Respondent to which he provided answers on 7 and 26 July 1995;

Whereas, on 6 July 1995, the Applicant submitted an additional statement;

Whereas, on 27 July 1995, the Tribunal informed the parties that it had decided to adjourn its consideration of the case until its 1995 Fall session.

Whereas the Tribunal also informed the parties "that it expects the classification process for the Applicant's post to be completed within three months of the date of receipt of this communication, eith by agreement on a description of the functions of the Applicant's post or by independent submissions by the parties to the Joint Classificati Committee for a recommendation, as set forth in the memorandum of 7 Ju 1995 communicated to the Tribunal by the Respondent."

Whereas, on 15 August 1995, the Applicant submitted an additional statement and further documents;

Whereas, on 6 November 1995, the Tribunal put a question to the Respondent to which he responded on 7 and 8 November 1995;

Whereas, on 9 November 1995, the Applicant submitted an additional statement;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations at the UN Office in Geneva (UNOG), on 3 May 1970, on a probationary

appointment, as a Spanish Typist at the G-2, step 1 level. On 1 May 1973, the Applicant was transferred to the International Narcotics Control Board and given a permanent appointment. She was promoted to the G-3 level, on 1 August 1972, as a Shorthand-Typist and to the G-4 level, on 1 July 1975. On 3 March 1980, the Applicant was transferred to the General Services Division, Building and Engineering Branch. On 1 April 1982, the Applicant's functional title was changed to Administrative Secretary.

In a memorandum dated 2 May 1990, the Applicant requested the Chief, Personnel Administration Section, to recommend granting her a long-service step. She explained that she had met the three eligibility prerequisites set forth in IC/Geneva/3383. In memoranda dated 30 July, 24 October, and 8 November 1990, the Applicant reiterated her request.

In a memorandum dated 6 December 1990, copied to the Applicant, the Chief, General Services, informed the Chief, Personnel Administration Section, that the Applicant's performance did not justify granting her the long-service step. He noted the difficulties he had had in discussing with her the necessity of reorganizing the work of the Engineering Unit, and that he had requested that she be transferred.

In a memorandum dated 17 December 1990, a Personnel Officer informed the Applicant that her request for a long-service step could not be granted, as it had not been recommended by the Chief, General Services. In a memorandum to the Applicant, dated 21 December 1990, the Chief, Personnel Service, confirmed the decision not to grant her the long-service step. On 14 January 1991, the Applicant requested the Secretary-General to review this decision. On 9 April 1991, she lodged an appeal with the Joint Appeals Board (JAB).

On 18 December 1990, the Applicant had instituted before a rebuttal panel a procedure to rebut her performance evaluation report (PER), covering the period 1 October 1986 to 31 October

1990. On 27 June 1991, the panel submitted its findings to the Chief, Personnel Administration Section, concluding that "the majority of points raised in the rebuttal" were "pertinent". The panel recommended that the PER be revised, taking into consideration its findings.

In a memorandum dated 17 July 1991, a Personnel Officer informed the Applicant that in the light of the panel's findings, the Chief, Personnel Administration Section, had decided that the PER would cover the period from 1 January 1986 to 30 September 1989, that the comment made in the PER by the Chief, Building and Technical Services Section, would be deleted, and that the overall rating would be changed to "a very good performance."

In a memorandum dated 23 July 1991, the Applicant again requested that she be granted the long-service step, noting that her performance had been found to be "very good". In a reply dated 25 July 1991, a Personnel Officer stated that as the dates covered by her PER had been revised, the PER no longer covered the date on which the Applicant completed twenty years of service. As the negative comment made by the Chief, General Services, concerned events subsequent to the period covered by the PER, he stated it was not invalidated by the changes made to the PER and that her supervisor's evaluation was still relevant to the long-service step.

On 10 August 1993, the JAB adopted its report. Its conclusions and recommendations read as follows:

> "Conclusions and Recommendations
>
> 39. ... the Panel concludes that new duties and a change of the working environment are an imperative need. The Appellant should be given a new opportunity of demonstrating motivation in her work and proving commitment to producing an entirely satisfactory performance.

40. The Panel also concludes that an administrative decision on this matter should not in any way interfere with the proceedings pending at the United Nations Administrative Tribunal.

41. Accordingly, the Panel recommends that the Appellant be considered, on a priority basis, for a transfer and/or mission and to adjust the terms of such a move at a lateral level to the need of harmonizing any such administrative decision with the judgement to be pronounced by the United Nations Administrative Tribunal [Judgement No. 645].

42. The Panel also recommends that the performance of the Appellant will be evaluated, within one year after her appointment to a new assignment, by her new supervisor and that a recommendation will then be made whether her overall performance would at that time be in conformity with the provisions on the long-service step as contained in document IC/Geneva/3383."

On 12 October 1993, the Under-Secretary-General for Administration and Management transmitted a copy of the JAB report to the Applicant and informed her that the Secretary-General had accepted its recommendations.

On 17 December 1993, the Applicant filed with the Tribunal the application referred to earlier.

On 14 July 1994, the Administrative Tribunal, in Judgement No. 645, ordered the Respondent to arrange for the classification of the Applicant's post by the Joint Classification Committee, on the basis of an objective evaluation of her functions. In a memorandum dated 11 October 1994, the Under-Secretary-General for Administration and Management requested the Assistant Secretary-General for Human Resources Management to arrange for such classification. On 6 November 1995, the Director-General of UNOG approved the recommendation of the Joint Classification Committee that the classification of the Applicant's post be maintained at the G-4 level.

Whereas the Applicant's principal contentions are:

1. The Applicant has fulfilled all the requirements set forth in IC/Geneva/3383 for a long-service step.

2. The decision not to recommend the Applicant for the long-service step was based on circumstances which arose after the date of her entitlement to the long-service step.

3. The JAB's failure to make a recommendation concerning the granting of a long-service step to the Applicant, and its recommendation that she be transferred on a priority basis, were arbitrary and outside the scope of her appeal.

Whereas the Respondent's principal contentions are:

1. The Applicant's claim to a long-service step cannot be considered pending the classification of her post, as ordered by the Tribunal.

2. The decision not to grant the Applicant a long-service step will be reviewed in the light of the results of the reclassification of the Applicant's post.

3. No compensation is due to the Applicant.

The Tribunal, having deliberated from 6 to 12 July 1995 in Geneva, and from 6 to 21 November 1995 in New York, now pronounces the following judgement:

I. Asserting that she had met the eligibility requirements, the Applicant, on 2 May 1990, requested the Chief, Personnel Administration Section, to make a recommendation that she be granted a long-service step. On 6 December 1990, she was informed that her supervisors could not make such a recommendation because her performance did not justify it, as indicated by her most recent

performance evaluation report (PER). Subsequently, as a result of a rebuttal procedure, the notation in that report regarding the Applicant's performance was changed from "a good performance" to "a very good performance".

II. On 9 April 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB) against the administrative decision not to grant her a long-service step. In the meantime, on 15 July 1992, in a separate proceeding, the Applicant appealed to the Tribunal against a decision by the Secretary-General, in connection with her request for the reclassification of her post from the G-4 level to the G-5 level.

III. In its report on the present appeal, the JAB stated that it was difficult to make a recommendation to the Secretary-General while the judgement of the Administrative Tribunal was pending on the job classification recourse of the Appellant.

IV. On 17 December 1993, the Applicant filed the present application with the Tribunal, requesting the Tribunal, inter alia, to order that she be granted a long-service step retroactively and compensation for moral suffering in the amount of US$25,000, as well as equitable compensation for administrative delays in handling her case and US$5,000 for reimbursement of legal expenses.

V. The issue in this case is whether the decision not to grant a long-service step to the Applicant violated her rights.

The Tribunal must therefore consider the nature of the right claimed and the conditions attached to it. Information circular IC/Geneva/3383 of 15 December 1986, entitled "Long-Service Step for General Service and Other Locally-Recruited Categories", stipulates that the long-service step is subject to the following criteria:

(a) Twenty Years of service within the common system;
(b) Five years of service at the top of the grade; and
(c) Entirely satisfactory service.

VI. The Applicant has satisfied the condition set out in (a), of twenty years of service. With regard to the condition of satisfactory service, set out in (c), the Tribunal notes that the Applicant's PER was found, following a rebuttal procedure, to be "very good" for the period ending 30 September 1989. The Tribunal also notes that the Applicant completed twenty years of service thereafter, in May 1990. IC/Geneva/3383 does not, however, require that a special performance review be conducted at the conclusion of twenty years of service in order for the long-service step to be granted. For the purposes of condition (c), particularly in view of the procedural irregularities acknowledged by the Respondent, concerning the Applicant's performance evaluation, the PER covering the period through September 1989 will be regarded by the Tribunal as continuing in effect to the Applicant's completion of twenty years' service. Hence, the Tribunal finds that the Applicant has met the condition set forth in (c).

A question remained as to whether the Applicant had five years of service at the top of her grade, the condition set out in (b). Throughout the five year period, the grade and level of the post encumbered by the staff member concerned must remain unchanged. In its Judgement No. 645, dated 14 July 1994, the Tribunal, in view of the Applicant's request for reclassification of her post, ordered that the Applicant's case be remanded to the Respondent for the purpose of arranging "for the classification of the Applicant's post by the Joint Classification Committee, on the basis of an objective evaluation of her functions." On 11 October 1994, the Secretary-General directed that the Tribunal's decision be implemented. On 8 November 1995, the Tribunal was informed of the recommendation of the Joint Classification Committee, approved

by the Director General of UNOG, to maintain the Applicant's post at the G-4 level. Hence, the condition set out in (b) has also been met. The Applicant is therefore entitled to the long service step.

Accordingly, the Tribunal considers that the Applicant's claim for a long-service step should be granted, with effect from 3 May 1990.

VII. As part of her claim, the Applicant asserts that the decision not to grant her the long-service step was motivated by discrimination or other improper motivation on the part of the Respondent. In this respect, the Tribunal has consistently held that the Applicant bears the burden of showing that prejudice or other improper motivation were the basis for decisions impugned. Specifically, it has held:

> "Under the Tribunal's consistent jurisprudence, the burden of proving prejudice or other improper motivation rests with the Applicant." (Judgement No. 465, Safavi (1989), para. V)

The Tribunal finds that the Applicant has failed to meet the burden of proof.

VIII. Similarly, the Tribunal believes that the Applicant has not demonstrated that she has suffered harm which would warrant the granting of any compensation for damages sustained as a result of the decision not to grant her a long-service step.

IX. For the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant the amount corresponding to a long-service step with effect from 3 May 1990.

X. The Tribunal rejects all other pleas.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Mayer GABAY
Member

New York, 21 November 1995

R. Maria VICIEN-MILBURN
Executive Secretary

UNITED NATIONS

AT

Administrative Tribunal

Distr.
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AT/DEC/725
21 November 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 725

Cases No. 791: KOSMINA
No. 792: MIKHAYLIN
No. 793: PAVLOV
No. 801: SLAVASHEVICH

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Francis Spain; Mr. Mayer Gabay;

Whereas, on 17 April 1994, Vyacheslav Kosmina, Alexandre Mikhaylin and Rosaline Alexandre Pavlov, and on 15 July 1994, Alexandre Slavashevich, all former staff members of the United Nations, filed applications requesting the Tribunal, inter alia:

"...

(a) To rescind the decision of the Secretary-General not to extend the Applicant[s]' contract[s] beyond 31 January 1992;

(b) To order the Applicants' immediate reinstatement with payment of full salary and applicable allowances and benefits from the date of [their] separation from service to the date of reinstatement;

(c) To find and rule that the Joint Advisory Committee erred as a matter of law in failing to find that the Applicant[s] [were] entitled to immediate reinstatement and reimbursement of lost earnings for the period since [their] separation;

(d) To find and rule that the decision of the Respondent not to extend the Applicant[s]' fixed term appointment[s] was flawed by the intrusion of prejudice and other extraneous factors and marred by irregularities in procedure;

(e) To award the Applicant[s] additional appropriate compensation to be determined by the Tribunal for the actual, consequential and moral damages suffered by the Applicant[s] as a result of the Respondent's actions or lack thereof;

(f) To fix, pursuant to article 9, paragraph 1 of the Statute and Rules, the amount of compensation to be paid in lieu of specific performance at three year's net base pay in view of the special circumstances of the case[s].

(g) To award the Applicant[s], as costs, the sum of $5,000.00."

Whereas the Respondent filed his answer on 11 May 1994;

Whereas the Applicants filed written observations on 30 November 1994;

Whereas the facts in the case are as follows:

The Applicant Kosmina entered the service of the United Nations on 5 October 1989, on a two year fixed-term appointment, as an Associate Translator at the P-2, step I level. His Letter of Appointment stated, as a special condition, that he was "on secondment from the Government of the USSR". His appointment was extended, first for one month and 27 days, through 4 November 1991, then for two further one month periods, through 1 January 1992, when he separated from the service of the United Nations. The extensions contained no special condition.

The Applicant Mikhaylin entered the service of the United Nations on 8 October 1989, on a two year fixed-term appointment, as a Translator at the P-3, step III level. His Letter of Appointment stated, as a special condition, that he was "on secondment from the

Government of the USSR". His appointment was extended, first for one month through 7 November 1991, then for one month and 24 days through 31 December 1991 and finally, for a further month, through 31 January 1992, when he separated from the service of the United Nations. The extensions contained no special condition.

The Applicant Pavlov entered the service of the United Nations on 3 October 1988, on a two year fixed-term appointment, as an Associate Translator at the P-2, step II level. His Letter of Appointment stated, as a special condition, that he was "on secondment from the Government of the USSR". His appointment was extended, first for three months and 29 days, through 31 January 1991, and then for a further two months, through 31 March 1991. These extensions were on secondment from the USSR. The Applicant's appointment was subsequently extended for six months and 2 days, through 2 October 1991; one month, through 2 November 1991; one month and 29 days, through 31 December 1991 and then, for a further one month, through 31 January 1992, when he separated from the service of the United Nations. These extensions contained no special condition.

The Applicant Slavashevich entered the service of the United Nations on 3 October 1988, on a two year fixed-term appointment, as an Associate Translator, at the P-2, step IV level. His Letter of Appointment stated, as a special condition, that he was "on secondment from the Government of the BSSR [Byelorussian Soviet Socialist Republic]". His appointment, on secondment from BSSR, was extended for one year, through 2 October 1991. It was then extended for one month and 29 days, through 30 November 1991, and thereafter for a further month, through 1 January 1992, when he separated from the service of the United Nations. These extensions, after 2 October 1991, contained no special condition.

On 31 May and 4 June 1991, respectively, the Applicants Kosmina and Mikhaylin signed their first performance evaluation reports (PERs). Both Applicants were given an overall rating of "fair". They instituted rebuttals to their PERs, the Applicant Kosmina by an undated memorandum and the Applicant Mikhaylin by a memorandum dated 2 July 1991. On 30 May and 3 June 1991, respectively, the Applicants Pavlov and Slavashevich signed their second PERs. Both Applicants were given an overall rating of "a good performance". Both instituted rebuttals to their PERs, the Applicant Pavlov by a memorandum dated 5 July 1991, and the Applicant Slavashevich by a memorandum dated 1 July 1991.

In a letter dated 2 August 1991, all the Applicants requested the Secretary-General to renew their fixed-term appointments, due to expire in October, or to award them career appointments. In a memorandum dated 16 August 1991, to the Assistant Secretary-General for Human Resources Management, the Under-Secretary-General in charge of the Department of Conference Services (DCS) recommended the non-renewal of the Applicants' appointments. In a memorandum dated 21 August 1991, the Applicants requested the Executive Officer, DCS, to extend their contracts at least for the time necessary to complete consideration of the rebuttal procedures they had instituted.

On 9 September 1991, the Applicants wrote to the Coordinator of the Panel on Discrimination and Other Grievances (the Panel on Discrimination). They requested the Panel to consider the consistent pattern of discrimination against those staff members of the Russian Translation Service who were no longer "on secondment" from the USSR Government. In a memorandum dated 20 September 1991, the Interim Coordinator of the Panel on Discrimination requested the Assistant Secretary-General for Human Resources Management to extend the Applicants' appointments for two months, on the ground that their preliminary investigation had discovered evidence of a pattern of discrimination in the Russian Translation Service. In a reply

dated 24 September 1991, the Assistant Secretary-General for Human Resources Management informed the Interim Coordinator of the Panel on Discrimination that he had decided to extend the Applicants' appointments for one month, to allow for completion of their rebuttal procedures.

The Rebuttal Panel, after reviewing the Applicant Kosmina's rebuttal, submitted its report on 17 September 1991. It proposed no changes in the Applicant's PER. Upon a request from the Applicant, together with a statement signed by 19 staff members, indicating that higher standards of performance evaluation had been applied retroactively, the Rebuttal Panel reconsidered the case. It did not accept the Applicant's claim, but did recommend upgrading his evaluation in certain categories. No recommendation was made, however, to change the overall rating of "fair".

The Rebuttal Panel, after reviewing the Applicant Mikhaylin's rebuttal, submitted its report on 15 October 1991. It stated that new and higher standards had been used to evaluate the Applicant's performance. It recommended upgrading his evaluation in certain categories. No recommendation was made, however, to change the overall rating of "fair".

The Rebuttal Panel, after reviewing the Applicant Pavlov's rebuttal, submitted its report on 19 September 1991. It recommended the upgrading of the Applicant's evaluation in one category and the deletion of another category which it deemed was not relevant to his work. No recommendation was made, however, to change the overall rating of "good".

The Rebuttal Panel, after reviewing the Applicant Slavashevich's rebuttal, submitted its report on 15 October 1991. It recommended the upgrading of the Applicant's evaluation in a

number of categories and the upgrading of his overall performance rating to "very good".

In four memoranda, all dated 15 October 1991, the Under-Secretary-General in charge of DCS considered the reports of the Rebuttal Panels. He decided to upgrade the ratings in two individual categories for the Applicants Kosmina, Mikhaylin and Slavashevich, and in one individual category for the Applicant Pavlov. He did not change the overall performance rating of any of the Applicants.

In a memorandum dated 18 November 1991, the Chief of the Russian Translation Service advised the Executive Office of DCS of his recommendations regarding the Applicants, noting the results of their rebuttals In each case, he stated that the Applicant's performance could not be certified as fully satisfactory and recommended no extension of his appointment. The Executive Officer of DCS transmitted these recommendations to the Assistant Secretary-General for Human Resources Management, who requested the Under-Secretary-General of DCS, on 19 December 1991, to review the cases. In a reply dated 31 December 1991, the Officer-in-Charge, DCS, endorsed the recommendations not to renew the Applicants' appointments. On 31 January 1991, the Applicants separated from service.

On 2 March 1992, the Applicants Mikhaylin, Pavlov and Slavashevich requested the Secretary-General to review the decision not to renew their appointments. On 5 March, 24 April and 26 April 1992, respectively, they lodged appeals with the Joint Appeals Board (JAB).

On 19 October 1992, the Panel on Discrimination reported its findings to the Assistant Secretary-General for Human Resources Management, that the Applicants were subject to "prejudicial treatment on the part of the Administration", "unequal treatment", "harassment", and "discrimination". It recommended that the

Applicants be reinstated and that appropriate measures be taken "to prevent similar situations from occurring in the future."

On 26 October 1992, the Applicant Kosmina requested the Secretary-General to review the decision not to renew his appointment. On 17 November 1992, the Director of Personnel advised the Applicant Kosmina that his request for review was time-barred. On 15 December 1992, the Applicant Kosmina lodged an appeal with the JAB.

On 16 December 1993, the JAB adopted its report, indicating that it had waived the time-limits in the Applicant Kosmina's case and had considered the cases of the four Applicants jointly. The JAB's conclusions and recommendation read as follows:

> "85. The Panel concluded that the responsibility of the Organization was engaged because the Respondent had taken the contested decisions (i) without due care, (ii) following a joint DCS-OHRM review which was procedurally flawed, and (iii) without a previous impartial investigation of a not implausible allegation that prejudice had tainted the contested decisions. However, the Panel was unable to conclude with certainty what would have been the outcome if these defects had not been present. Therefore, following the example of the Tribunal in the **Vitkovski** case, the Panel, instead of recommending reinstatement of the Applicants, **recommends** that each of them be paid, for the injury sustained, an amount equal to eighteen months of their net base salary at the rate in effect at the date of separation."

On 17 April 1994, the Applicants Kosmina, Mikhaylin and Pavlov, and on 15 July 1994, the Applicant Slavashevich filed with the Tribunal the applications referred to earlier.

On 19 April 1994, the Acting Under-Secretary-General for Administration and Management transmitted a copy of the JAB report to each of the Applicants and advised them that "[a]lthough not in agreement with all of the Board's findings and conclusions, the Secretary-General, in the interest of a satisfactory resolution of the cases dealing with staff formerly thought to be on secondment, has agreed with the recommendation of the Board that you be paid an

amount equal to eighteen months of your net base salary at the rate in effect at the date of your separation from the Organization."

Whereas the Applicants' principal contentions are:

1. Even though accepted in its entirety by the Secretary-General, the recommendation of the JAB for the amount to be paid in lieu of reinstatement falls short as a remedy for the harm done.

2. In the light of precedent set by the Tribunal and the findings of the Panel on Discrimination, the "continued intransigence of the Respondent" requires both reinstatement and compensating damage as reparation.

Whereas the Respondent's principal contentions are:

1. In Judgement No. 559, the Tribunal decided that payment of 18 months net base salary was appropriate compensation for claimants in the same position as the present Applicants.

2. The award of the same amount by the Secretary-General to the present Applicants is a reasonable exercise of his discretion which adequately compensates the present Applicants.

The Tribunal, having deliberated from 24 October to 21 November 1995, now pronounces the following judgement:

I. The appeals in these cases are from decisions of the Respondent, dated 19 April 1994, accepting the recommendation of the Joint Appeals Board (JAB), dated 16 December 1993, that the Applicants be paid 18 months' salary. The JAB, finding that the four cases involved common questions, joined them for consideration in a single report. The Tribunal also considers that joinder of these cases is appropriate and will decide them in a single

Judgement. In addition, oral argument is requested. The Tribunal decides that the files are adequate and that oral argument is unnecessary.

II. The Tribunal notes that a claim was made by the Respondent, before the JAB, that the Applicant Kosmina's appeal was not receivable because of the untimeliness of his request for review of the administrative decision to separate him from service. The decision had been communicated to him in writing on 2 January 1992, but he did not request its review until 26 October 1992. He was awaiting action by the Panel on Discrimination and Other Grievances (the Panel on Discrimination) on his complaint. The JAB held that it was authorized by staff rule 111.2(f)(sic.) to waive the time limit. Presumably, the intended reference was to staff rule 111.2(e). Although the Respondent contested the timeliness issue before the JAB, he has not done so before the Tribunal, which, therefore, need not consider it.

III. The JAB report in these cases reflects a careful and thorough analysis of the facts. The JAB noted that its recommendation, which was accepted by the Respondent, was patterned on the remedy found by the Tribunal to be appropriate in Judgement No. 559, Vitkovski and Rylkov (1992). The JAB had concluded that the cases of the four individuals under consideration involved circumstances sufficiently similar to those in Judgement No. 559 to warrant a similar remedy. The present appeals are aimed at convincing the Tribunal that differences in the present cases justify a more extensive remedy than that recommended by the JAB and accepted by the Respondent.

IV. Specifically, the Applicants ask that the Tribunal rescind the Respondent's decision not to extend the Applicants' contracts; to order their reinstatement with payment of full salary and allowances and benefits; to award additional compensation for

alleged actual, consequential, and moral damages; to fix the amount of the compensation in lieu of specific performance at three years' net base pay; and to award each of the Applicants as costs $5,000.

V. The Applicants, like those in Judgement No. 559, had been staff members serving in the Russian Translation Service. Their employment by the Organization began prior to Judgement No. 482, Qiu, et al. (1990), and at that time, they were deemed to be on secondment from their governments. The Applicants Slavashevich and Pavlov began their service in 1988, on two-year fixed-term appointments which were subsequently extended for one year. The Applicants Mikhaylin and Kosmina were first appointed in 1989 for two years. All of the appointments expired in October 1991. They were extended in installments to 31 January 1992, pending completion of an internal review process presumably intended by the Administration to make impartial and objective recommendations with respect to extensions of employment by persons in the position of the Applicants. The principal issue in the present cases, as viewed by the JAB, was whether the internal review process provided the Applicants with the elements of due process and fair procedure so as to assure them of reasonable objective consideration; or if the process and the resulting adverse recommendations were flawed by extraneous considerations or other improper factors. This is the issue that was considered by the Tribunal to be central in Judgement No. 559. The JAB found that, in the process of considering whether to extend the fixed-term appointments of the Applicants, the Respondent failed to exercise the prudence, care, and attention deemed appropriate by the Tribunal in Judgement No. 559.

VI. The JAB also found that the procedure employed by the Administration, which led to the decisions against renewal, constituted unequal treatment since it differed from the procedure used in the cases which led to Judgement No. 559 and did not comply

with the standards set forth in Judgement No. 559. In addition, the JAB deemed that, as the Tribunal had found in Judgement No. 559, an impartial investigation of allegations of prejudice should have been, but was not conducted. The JAB's various findings were based on its analysis of the evidence. In the end, the panel made no finding on whether the Chief of the Russian Translation Service was or was not prejudiced in his actions with regard to the Applicants. The JAB also indicated, as had the Tribunal in Judgement No. 559, that it was unable to conclude with certainty what the outcome would have been if the various defects which it had identified had not been present.

VII. The Applicants, though largely in agreement with the JAB's reasoning, nevertheless say that it did not give sufficient weight to the evidence of prejudice and failed to recommend that the harm allegedly done called for a remedy beyond that in Judgement No. 559. The issues, according to the Applicants, are: whether they are entitled to reinstatement in the light of the JAB findings; whether they are entitled to additional damages; and whether they are entitled to three years salary in lieu of specific performance. The Tribunal concludes that the answer to each claim of further entitlement is in the negative.

VIII. The Applicants argue that significant features so differentiate their cases from those dealt with in Judgement No. 559 as to warrant a more extensive remedy. The Tribunal does not agree. In its view, the present cases, while not presenting facts identical in all respects to those involved in Judgement No. 559, are similar in nature. The JAB's conclusion that there was sufficient evidence to have warranted an investigation of the allegations of prejudice was appropriate. Equally, it was appropriate for the JAB, on the facts before it, to decline to make a determination on whether there was prejudice. The Tribunal is not convinced by the Applicants'

contentions, or by the evidence, that prejudice caused the non-extension of their appointments. The Tribunal also finds that the JAB dealt reasonably with the claims of extraneous influence and defective procedures. The same is true with regard to the JAB's unwillingness to accept at face value the report of the Panel on Discrimination. The Tribunal's assessment of the Applicants' contentions, measured against the report of the JAB, convinces it that there is insufficient justification for the more extreme remedies sought by the Applicants.

IX. Much is made by the Applicants of alleged unfulfilled obligations on the part of the Respondent with respect to the handling of these cases stemming from the analysis made by the Tribunal in Judgement No. 559. But that Judgement was rendered on 30 June 1992 and was not communicated to the parties until 10 August 1992. The events in the present cases occurred, for the most part, in 1991. The separation of the Applicants took place on 31 January 1992. Since this was long before Judgement No. 559, knowledge of its contents can hardly be imputed to the Respondent.

X. The Tribunal sees no decisive differences between the non-renewals of the Applicants' contracts and the comparable decisions in Judgement No. 559, which would warrant their reinstatement. As in the case of the applicants involved in Judgement No. 559, the question of entitlement to further employment by the Organization was dependent on an evaluation of the quality of the applicants' performance. It is by no means clear from their performance histories, including the pertinent Rebuttal Panel reports, that they would have received further appointments even if none of the deficiencies identified by the JAB was present. The Tribunal will not attempt to evaluate on its own their performance. Moreover, the Tribunal does not consider that administrative determinations made in Geneva with respect to the Translation Service there, on the

basis of its needs and the availability of personnel, are relevant for the Translation Service in New York.

XI. Nor does the Tribunal agree with the Applicants in respect of the weight they attribute to certain factors in influencing Judgement No. 559. The Tribunal also does not accept the Applicants' contention that the views of the Panel on Discrimination, which were disputed by the Administration, are conclusive.

XII. The Tribunal does not consider that the mere fact that similar issues had been raised previously made "more egregious" the decision of the Respondent rejecting the recommendations of the Panel on Discrimination. The Administration was, in the circumstances, entitled to make an independent evaluation of the report. That it did so and reached a different conclusion does not, in itself, warrant condemnation. The Tribunal agrees with the JAB regarding the deficiency in the report of the Panel on Discrimination, as well as with its comments regarding the Administration's investigation. While agreeing with the JAB's finding regarding the absence of an investigation of allegations of prejudice, the Tribunal does not consider that this aspect of the case justifies a drastically different remedy than that provided in Judgement No. 559. The Tribunal does not know and will not speculate as to what the outcome of an appropriate investigation of the allegations of prejudice might have disclosed.

XIII. In one respect, the Tribunal agrees with a contention advanced by the Applicants. A finding that two cases are identical may not necessarily warrant identical remedies and a finding that standards established by the Tribunal in one case were violated in another does not signify that a remedy appropriate in the earlier case is necessarily called for in the later case. It does not

automatically follow from this, however, that the remedies sought here by the Applicants must be granted. In the view of the Tribunal, it is entirely proper for it to give weight to JAB recommendations based on a careful, thorough, and well-reasoned analysis of the evidence when those recommendations are accepted by the Respondent. This does not mean, however, that the Tribunal will not independently make its own assessment of the issues presented to it in an appeal by the Applicant from such a decision by the Respondent. In these cases, the Tribunal has made its own assessment regarding the various issues raised and has concluded, for the reasons set forth above, that the Respondent's decision accepting the recommendation of the JAB was reasonable and proper and that the relief sought by the Applicants is not warranted.

XIV. For the foregoing reasons, the applications are rejected, as are the requests for costs.

(Signatures)

Jerome ACKERMAN
President

Francis SPAIN
Member

Mayer GABAY
Member

New York, 21 November 1995

R. Maria VICIEN-MILBURN
Executive Secretary